

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**RENEWED OBJECTION TO ANONYMOUS/INNOMINATE JURY AND RESPONSE
TO COURT'S ORDER ON JURY QUESTIONNAIRE**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, renews his previous objections to the use of an Anonymous/Innominate Jury and further responds to the Court's Order on Jury Questionnaire. As grounds in support thereof, the defendant would show:

A. Anonymous Jury

Mr. Fariz renews his objection to the empaneling of an anonymous or innominate jury in this case. The Eleventh Circuit, in *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994), delineated the standards by which a district court may empanel an anonymous jury. Sufficient cause exists to empanel an anonymous or innominate jury upon a showing of a combination of factors, which include:

(1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment.

Id. at 1520.

The use of an anonymous jury is a drastic measure. It is clear that, in this case, an adequate combination of the above-stated factors does not exist to allow the empaneling of an anonymous or

innominate jury. Mr. Fariz would further emphasize that an anonymous jury is not warranted when, as here, there is no evidence that any of the named defendants have engaged in witness intimidation commensurate with violent conduct. *Id.* at 1520; *Bowman*, 302 F.3d at 1238-39.

As for the first factor, Mr. Fariz is not alleged to have been involved in organized crime, at least with respect to the traditional concept of organized crime in the United States, *i.e.*, large-scale criminal enterprises engaged in illegal activity solely for personal power or profit. Moreover, while Mr. Fariz does not concede that he is in any way involved with the Palestinian Islamic Jihad (PIJ), even if the Court believes the PIJ to be an organized crime group for the purposes of this issue, the mere invocation of the PIJ in the indictment is insufficient to order an innominate jury. *Id.* at 1521 n.26. With respect to the second factor, it is undisputed that the PIJ has not conducted any violent activity in the United States that could presuppose possible harm to jurors within the Middle District of Florida. Finally, it is also undisputed that Mr. Fariz has made no attempts to interfere with the judicial process anywhere within the United States.

This Court has stated that it is the fifth factor, excessive pre-trial publicity, that is the primary concern. Mr. Fariz respects and understands this Court's concerns in light of the excessive publicity in the media during Florida's Senatorial campaign. However, the empaneling of an anonymous or innominate jury is a drastic measure that raises the specter that the defendant is a dangerous person from whom the jurors must be protected, thereby implicating the defendant's constitutional right to a presumption of innocence, even if this is not the Court's intent.

Mr. Fariz respectfully suggests that less drastic measures can be taken to protect the jurors from the effects of excessive publicity. For example, Mr. Fariz suggests that the jury's names, addresses, and work places be released to the parties, but not further. By proceeding in this manner,

the jury would not have to know that anything out of the ordinary was occurring, and the risk of prejudice would be eliminated. The Court could enter a protective order to prevent dissemination of this information beyond those directly involved in the case.

Alternatively, if the Court decides to empanel a truly anonymous or innominate jury, Mr. Fariz would request that a limiting instruction be made with respect to this issue, as referenced in *Ross*, 33 F.3d at 1521 n.27. Such a limiting instruction would serve the purpose of alleviating the inference of Mr. Fariz's guilt on the jury's part.

B. Jury Questionnaire

1. Procedures

As counsel for Mr. Fariz expressed at the last hearing held before this Court on October 15, 2004, Mr. Fariz suggests alternative procedures for disseminating and collecting the jury questionnaires. Mr. Fariz respectfully suggests that the jury questionnaires would better serve the needs of the parties and this Court if they were disseminated at the Courthouse, rather than mailed to the homes of potential jurors. First, this procedure would ensure receipt of completed questionnaires, because the potential jurors would be required to report to the Clerk's office just as they would if called to jury duty on any other matter. Second, the Court would be able to maintain the integrity of the questionnaires by ensuring that each potential juror completed his or her form without any comments or input from friends, family, or others. Third, the Court would have the opportunity to personally explain the procedure to the jurors, and most importantly, to personally instruct them not to read, watch or listen to media reports concerning the case or any of the Defendants and in turn receive the jurors sworn assurances to abide by the instructions. *See, e.g., In re Visa Check/Mastermoney Antitrust Litigation*, 2003 WL 1712567 (E.D.N.Y.

2003) (450 potential jurors were summoned to the courtroom, in two separate sessions, to complete questionnaires and hear instructions by the Court.); *see also United States v. Koubriti*, 252 F. Supp. 2d 424 (E.D. Mich. 2003) (potential jurors were summoned to court to complete questionnaires three weeks before beginning of the trial; the Court instructed the potential jurors about the case and ordered them not to watch media about the case. The Court also granted a motion to close individual *voir dire* to the public).

Because of the potential problems associated with mailing jury questionnaires, Mr. Fariz respectfully requests that this Court configure an alternate plan that includes summoning the jurors to the courthouse so that they may fill out the questionnaires in person, and, more importantly, be instructed by this Court in person. This Court's concern regarding attendant inconvenience to jurors who will be stricken due to hardship reasons is understandable but must be secondary to the empaneling of an untainted jury.

2. Questions

Mr. Fariz reasserts his objections to the proposed jury questionnaire as outlined in his Objection to the Proposed Jury Questionnaire filed July 26, 2004. Doc. 580. The Court has not filed a final version of the jury questionnaire nor made any written ruling on the objections raised by Mr. Fariz in July. The Court distributed a copy of the latest version of the jury questionnaire by email on October 18, 2004 and at the miscellaneous hearing held on October 15, 2004. Mr. Fariz remains unclear, however, whether this Court has considered and ruled on his objections to the Proposed Jury Questionnaire filed July 26, 2004. (Doc. 580)

Mr. Fariz is therefore obligated to reassert the objections posed in July, and emphasizes his objection to the wording of Question 35 which states:

Do you have any experiences, feelings or impressions about Palestinians, Arabs or Muslims that would make it difficult for you to listen to the evidence with an open mind and render a verdict based solely on the evidence presented in court when the case involves Palestinian, Arab, or Muslim men charged with various acts of terrorism?

This question asks about potential jurors' ability to listen to evidence presented in a case involving charges of "various acts of terrorism." Posed in this manner, the reference to "various acts of terrorism" is likely to be understood to mean that the Defendants are accused of carrying out acts of violence themselves. None of the defendants in this case is charged with performing an "act of terrorism" in the manner of carrying out a terrorist attack. Mr. Fariz therefore proposes that the question be amended to incorporate language such as that in Question 32 ("... in a case where there are allegations of support for people and/or organizations the government has designated as terrorists?").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2004, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender